899

Judiciary Committee
Hearing on Raised Bill No. 899
Testimony of Mark W. Dost
March 6, 2009

Good afternoon, House Chairman Lawlor, Senate Chairman McDonald, and other members of the Committee. My name is Mark Dost. I am a resident of Waterbury and an attorney in private practice. By way of credentials, I am a member of the executive committees of the Estates and Probate, Elder Law, and Human Rights and Responsibilities Sections of the Connecticut Bar Association. I am also a past chair of the Elder Law Section of the CBA and a fellow of the American College of Trust and Estate Counsel. My views presented this afternoon are my own. This afternoon, I am speaking with regard to Raised Bill 899, which purports to implement the *Kerrigan* decision.

My first point: There is no emergency that requires that this legislation be passed or that it be passed in haste. The *Kerrigan* decision required no implementing legislation. It was self-implementing. Same-sex couples are already being "married" in Connecticut.

Second: If the legislature feels the need to enact implementing legislation, it should at the same time implement civil rights legislation to protect against state intrusion on the civil liberties of people of faith and others who do not share the views of the four *Kerrigan* judges who voted to change our law. And that will require a change in the so-called "gay rights" bill passed in 1991. It may help to remember that the gay-rights bill was passed *with the support of the Catholic church* in order to promote tolerance toward homosexuals. It did not threaten the rights of individuals and groups who believe that sexual activity should be limited to the union, for life, of a man and woman in marriage. If RB 899 is about civil rights, then the bill should make it clear that the State is not committing itself to a policy of intolerance toward people of faith. Instead, this committee should be adopting legislation that will protect the constitutionally protected free-speech and associational rights of people who hold to traditional view of marriage.

RB 899 seeks to repeal sec. 46a-81r, a section of the "gay-rights" law passed in 1991. Section 4 of that act (marriage in CT is limited to the union of a man and a woman) perhaps could go, given Kerrigan. But sec. 46a-81r itself is a critical part of the gay-rights law, since it establishes that the purpose of the law, which impinges not only on state action but also on private rights, is tolerance. My fear is that outright repeal of sec. 46a-81r would move public policy from tolerance to affirmation of homosexuality and, with that, intolerance of those of us on the other side of the debate who do not and can not affirm same-sex marriage because of faith, reason, or conscience.

I am concerned with the impact of this legislation on freedom of expression, freedom of association, and freedom of religion. The current religious exemption

in 46a-81p provides some measure of protection to religious entities and religious educational institutions, but does not come close to meeting the first-amendment standards enunciated in the *Hurley* and *Dale* cases. Section 46a-81r, then, in conjunction with section 46a- 81p, has acted as an important counterbalance against overreaching by those who might apply the earlier sections of the gay-rights law beyond its four corners. It should not be eliminated unless and until provisions are substituted or added that would protect expressive, associational, and religious rights. In addition, there should be something in the law that acknowledges the rights of parents to have their children opt out of public-school curricula contrary to the teachings of their faith or own moral convictions; that may not be constitutionally required, but it is an important and necessary accommodation to parents. I am also concerned with the rights of public-school teachers and other public employees who refuse to promote, against reason and conscience, the idea of sex outside of marriage, as that term has historically been defined.

RB 899 has some other flaws. For example, the provision concerning marriage ceremonies (sec. 7) is flawed, since it does not appear to recognize that some weddings are performed, legally, in congregations that have no ordained clergy.

Even proponents of same-sex marriage may have some questions about the policy decisions being made in RB 899. For example, it eliminates civil unions and requires that same-sex couples choose marriage; I am not sure I understand the policy reason for eliminating the choice, especially when only two states recognize same-sex marriage. Further, the bill converts existing civil unions to same-sex marriages, rather than allowing an opt-in. It also does not make clear under what conditions civil union partners or domestic partners from other states who happen to be in Connecticut temporarily would become "married," thus muddying their legal status in other jurisdictions.

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